IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.07.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 985 OF 1997
AND
CRL. R.C. NO. 860 OF 1997

C.A. NO. 985 OF 1997

State by
Inspector of Police
Madhikonpalayam
Dharmapuri, rep. by
Public Prosecutor
High Court, Madras. .. Appellant

- Vs -

Duraisamy .. Respondent

CRL. R.C. NO. 860 OF 1997

Sivakami .. Petitioner

- Vs -

1) Duraisamy

2) Inspector of Police
Mathikonpalayam Police Station
Dharmapuri District .. Respondents

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Criminal Appeal & Criminal Revision preferred against the acquittal passed by the learned I Addl. Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri, made in S.C. No. 50 of 1995 dated 12.8.97 as stated therein.

For Appellant/ Petitioner : Mr. S.Jayakumar, APP in CA 985/97
Mr. R.Sankarasubbu in Crl. R.C.860/97

For Respondent : Mr. S.Doraisamy, in CA 985/97 and for R1 in Crl. R.C. 860/97
Mr. S.Jayakumar, APP, for R2

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COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

This judgment shall govern C.A. No.985/97 and Crl. R.C.860/97. The accused was charged and tried for an offence under Section 302 IPC and he was acquitted of the said charge. Aggrieved over the acquittal of the accused in S.C. No. 50 of 1995, C.A. No.985/97 has been preferred by the State while Crl. R.C. No.860/97 has been preferred by the complainant.

2. The short facts necessary for the disposal of this appeal and revision could be stated thus :-

P.W.1 is a native of Nadupatti and the deceased Govindasamy was her husband. The accused/respondent is the cousin brother of P.W.1. P.W.3 is the nephew of the deceased. Seven years back, on the strength of a promissory note, the deceased borrowed a sum of Rs.2,500/= from the accused. On many occasions there were demands from the accused, but the amount was not repaid by the deceased. Two years prior to the occurrence there was a demand made by the accused on the son of the deceased through his first wife. Since there was a refusal, a quarrel arose, which culminated into a criminal case against the accused, which was registered as a case and was pending before the Judicial Magistrate No.I, Dharmapuri, but the amount was not paid.

3. On 2.1.94 during the evening hours, a demand was made by the accused to which the deceased replied that he will pay the amount after harvesting his lands. Even on 3.1.94 also the same demand was made by the accused and the deceased gave the same reply, but the accused was not satisfied with the reply and he informed the deceased that he should pay the amount by 10.00 a.m. on 4.1.94 or otherwise he would be finished off. On 4.1.94 at about 6.00 p.m. when P.W.1 and her husband, the deceased Govindasamy, were in the beetlenut garden of one Krishnan, the accused came there and demanded money from the deceased. As usual the deceased gave a reply that he would pay back after the harvest was over, but the accused was stating that he would go to a civil court to get back the money due on the promissory note. Immediately the deceased replied that he could do so. Immediately the accused took the veech aruval M.O.1 concealed in the blanket and cut the deceased indiscriminately. The occurrence was not only witnessed by P.W.1 but also by P.W.3 who was standing nearby. On seeing the accused cutting the deceased P.W.s 1 and 3 shouted and on hearing the shouting all the villagers gathered. The accused ran away from the place.

4. P.W.1 went to the police station and gave a complaint, Ex.P-1, at about 8.00 p.m. to P.W.10, the Sub-Inspector of Police, who was on duty. On the basis of Ex.P-1, a case was registered in crime No.8/94 against the accused under Section 302 IPC. Ex.P-18 is the copy of the first information report and the same was despatched to court.

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5. P.W.11, the Inspector of Police, on receipt of the copy of the printed first information report, took up investigation in the crime

and proceeded to the scene of occurrence at about 10.15 p.m., where he prepared an observation mahazar, Ex.P-6 and drew a rough sketch, Ex.P-19 in the presence of two witnesses. Thereafter, he conducted inquest over the dead body of the deceased between 1.15 a.m. and 4.30 a.m. on 5.1.94 and prepared Ex.P-20, inquest report. After inquest, he sent the dead body along with a requisition to the doctor for conducting autopsy.

6. On receipt of the requisition, P.W.2, the doctor attached to the Government Hospital, Dharmapuri, conducted autopsy on the dead body of the deceased and found the following injuries :-

> "1) Incised injuries right parietal region of scalp 10 x 1 x 1 cm.
> 2) Incised injuries 22 x 3 x bone depth extending from the right temple running backwards over right external ear going downwards and backwards along the lower aspect occipital region of scalp upto the middle of the back of neck.
> 3) Incised injuries over left cheek in front of right ear of size 7 x 1 x 1 cm.
> 4) Incised injuries over the back of neck just below the occipital region of scalp 19 x 3 x bone depth. The injuries extending from right mastoid process to left mastoid process.
> 5) An incised injury over the lower aspect of the back of neck 19 x 3 x 3 cm.
> 6) Incised injury 23 x 3 x 3 cm over right scapular region back."

The doctor issued Ex.P-4, the post-mortem certificate opining that the deceased would appear to have died of shock and haemorrhage as a result of the injury sustained over the neck, brain and spinal cord and that death would have occurred about 14 to 20 hours prior to autopsy.

7. Pending investigation, the accused was arrested on 5.1.94. The accused gave a confessional statement in the presence of P.W.6, the Village Administrative Officer and other witnesses, the admissible portion of which is marked as Ex.P-8 and the same was recorded by the investigating officer. Pursuant to the admissible portion of the statement, Ex.P-8, the accused produced M.O.1, veech aruval and M.O.2, blanket and they were seized under a mahazar. Pursuant to the requisition given by the investigating officer, the material objects were forwarded for analysis by the court and the court received Exs.P-15 and P-16, the chemical analysis report and Ex.P-17, the serologist report. On completion of investigation, final report was filed against the accused and the case was committed to the court of sessions and necessary charges were framed against the accused by the trial court.

8. In order to substantiate the charges levelled against the accused, the prosecution marched eleven witnesses and relied on twenty exhibits and seven material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence

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of the witnesses. The accused flatly denied them as false. No defence witness was examined. The trial court, after hearing the arguments on either side and on scrutiny of the materials available before it, found the accused not guilty. Aggrieved over the acquittal of the accused, the State has brought forth this appeal, while the aggrieved complainant, P.W.1 has preferred the revision.

9. Learned Addl. Public Prosecutor appearing for the State advancing his arguments, while assailing the judgment of the court below would submit that the trial court has rejected the testimony of P.W.s 1 and 3 solely on the ground that they are relatives. It is pertinent to point out that the accused is also related to P.W.s 1 and 3. The learned counsel would further point out that on a careful scrutiny exercised over their evidence of P.W.s 1 and 3, it would be clear that they have given clinching evidence, which should have been accepted by the trial court. All the reasons adduced by the trial court for rejecting their evidence are flimsy and not even one contradiction has been brought to the notice of the lower court and thus the lower court should not have rejected their evidence. Apart from the above, the occurrence had taken place at about 5.00 or 6.00 p.m. and the occurrence was registered as a crime by the Sub-Inspector of Police at about 8.00 p.m. in the police station which is situated eleven kilometres away. It is also pertinent to point out that the name of the accused finds a place in the first information report and apart from that the presence of P.W.3 at the scene is also found mentioned in the first information report. That apart, the first information report had reached the court by 10.00 p.m. the very night (i.e.) within a very short time and this would speak about the genuineness and truth of the prosecution case. He would further point out that in the instant case, the medical evidence also corroborates the ocular testimony. Without any reason whatsoever, the lower court has acquitted the accused. Added further the learned counsel would contend that the reasons adduced by the trial court for acquitting the accused cannot for a moment be accepted by any court of law. The trial court has failed to appreciate the evidence of the prosecution in its proper perspective and acquitted the accused. In the circumstances the judgment of the trial court has got to be rejected and the accused has got to be dealt with in accordance with law.

10. The learned counsel appearing for the accused/respondent, in his sincere attempt to sustain the judgment of acquittal of the trial court would submit that there are number of discrepancies in the evidence of P.W.s 1 and 3, who are closely related to the deceased and the trial court has pointed out that their evidence is not free from doubts and thus they could not be believed. Apart from that, the conduct of P.W.s 1 and 3 at the time of occurrence was not one would expect of any reasonable person. The deceased, who was the husband of P.W.1 and the uncle of P.W.3 was being attacked by the accused, but though they claim themselves to be eye witnesses to the occurrence, they did not go to the rescue as one would expect to be the reasonable conduct of any human being and this shows that they could not have been present at the scene of occurrence. That apart, the recovery alleged would clearly indicate that it is not only unworthy, but it is thoroughly improbable and the trial court has rightly rejected the

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same. The learned counsel for the accused would further contend that there are no compelling circumstances to set aside the judgment of acquittal since the trial court has marshalled the evidence proper, considered the evidence and has found that the prosecution has not proved the case beyond reasonable doubt. The learned counsel would further add that unless and until the judgment of the trial court is shown to be perverse and unreasonable, the judgment has got to be sustained. Added further the learned counsel, even assuming the facts of the prosecution case are proved, it would not attract the penal provisions of murder, but would fall under the exceptions to murder that could be termed only as culpable homicide. From the evidence that is available, it could be seen that there was sufficient provocation for the accused as he could not recover the money on a promissory note and the deceased was going on refusing to pay and at the time of occurrence, as could be seen from the evidence, the deceased had directed the accused to go to a civil court and recover the amount and due to the provocation the accused has committed the act and this would not attract the penal provisions and in that view, the accused is entitled to the benefit of one of the exceptions.

11. The Court paid its full attention to the submissions made by either side and also perused the recorded evidence, both oral and documentary.

12. In the instant case, it is not in controversy that the husband of P.W.1, Govindasamy, who sustained injuries at the place of occurrence, died instantaneously and that death was on account of homicidal violence. In support of the same the prosecution has examined P.W.2, the doctor who conducted autopsy on the body of the deceased and also marked the post-mortem certificate, Ex.P-4. The accused has also not disputed the cause of death of the deceased either before the trial court or before this Court. On the medical evidence we hold that the deceased died on account of homicidal violence.

13. The trial court has acquitted the accused stating that the prosecution has not proved the case beyond reasonable doubt. A perusal of the judgment of the trial court clearly shows that P.W.s 1 and 3 are close relatives of the deceased and, hence, their evidence has got to be scrutinised very carefully with great care and caution. The lower court has taken the view that the evidence of P.W.s 1 and 3 is unacceptable and it would further add that if P.W.s 1 and 3 were eye witnesses to the actual occurrence then on seeing the deceased, who is the husband of P.W.1 and uncle of P.W.3 being indiscriminately cut by the accused, they would have immediately gone to the rescue for saving him and apart from that there are discrepancies found in the evidence of P.W.s 1 and 3 and P.W.1 in one place had said that the occurrence had taken place at 5.00 p.m., but in the first information report she has said that the occurrence had taken place at 6.00 p.m. Further the trial court has adduced one of the main reason for acquitting the accused is the non-examination of one Krishnan, who is the owner of the beetlenut garden, where P.W.3 was working and where the occurrence had taken place. Apart from that the trial court has also reasoned that no independent witness has been examined though they were available at the time of occurrence. On the above reasonings the trial court has

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acquitted the accused.

14. This Court heard the learned counsel for the State on the above reasons. After careful consideration of the judgment under challenge, this Court is of the considered opinion that the trial court has not appreciated the evidence adduced by the prosecution in the proper perspective. True it is that P.W.1 is the wife of the deceased and P.W.3 is the nephew of the deceased, but their relationship to the deceased alone cannot be a reason for disbelieving their evidence. This Court has carefully scrutinised their evidence and this Court is unable to note any discrepancy in their evidence. Further, P.W.1 has given a clear narrative of the occurrence that had taken place and according to her she was present with her husband at the time of occurrence and that the accused came there and made a demand for the money and the deceased told the accused to approach the civil court and recover the same. The accused, who had wrapped a blanket around him, took out the veech aruval, M.O.1 and cut the deceased indiscriminately. She has further added that P.W.3 was witnessing the occurrence and he was standing at a distance of ten feet. P.W.3 has fully corroborated the evidence of P.W.1.

15. It is pertinent to point out that the occurrence had taken place at about 6.00 p.m. and the complaint was given at the police station at about 8.00 p.m., which is situated at a distance of eleven kilometres and the complaint contains a thorough narrative of the entire occurrence and apart from that the name of the accused and the presence of P.W.3 at the time of occurrence are found mentioned in the first information report. It is pertinent to point out that all other witnesses have come to the place of occurrence subsequent to the occurrence and thus it would be quite clear that the earliest version in the first information report that P.W.s 1 and 3 were the only eye witnesses to the occurrence and the first information report was given within two hours of the occurrence and the same reached the court the very same day within a few hours of its registration and inquest was conducted immediately thereafter by the investigating officer on coming to the scene of occurrence would all point to the truth of the prosecution case. The medical evidence adduced through the doctor also disclose that the deceased died due to shock and haemorrhage due to the injuries caused. Without taking into consideration any of the above and without adducing any reason whatsoever, the trial court has rejected the evidence of P.W.s 1 to 3, which cannot be sustained.

16. It is well settled proposition of law that where the eye witnesses are close relatives of the deceased, the Court has to exercise great care and caution. This Court has exercised great care and caution and on careful scrutiny of the evidence, this Court feels that there is no reason to reject the evidence of P.W.s 1 and 3. Merely because of the reason that P.W.s 1 and 3 are close relatives of the deceased their evidence cannot be rejected, but the trial court has erroneously done so. Added further, when once the court is able to see that the evidence of P.W.s 1 and 3 is cogent, natural, acceptable and convincing, and merits acceptance. Apart from that, their evidence is also corroborated by the medical evidence and, therefore, this Court has to necessarily set aside the acquittal of the accused.

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17. This Court is also conscious of the fact about the settled proposition of law that unless and until there are compelling circumstances available, the appellate court should not set aside the judgment of acquittal made by the trial court. In the instant case, the judgment of the trial court, a perusal of which would clearly indicate that it is not only unreasonable and also without proper reasons, the trial court has acquitted the accused.

18. On the settled principles of law, this Court has to point out that in a given case, where the Court is able to see the judgment of the trial Court is unreasonable or perverse, the Appellate Court has to necessarily interfere. This is one such case, where the Court has to follow the decision of the Supreme Court reported in STATE OF RAJASTHAN Vs. RAJA RAM (2003) 8 SCC 180), where the Supreme Court held as follows:-

> "The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. The principle to be followed by the appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. "

The above said view of the Supreme Court squarely applies to the facts of the present case.

19. The other contention put forth by the learned counsel for the respondent is that though the facts of the prosecution case are proved, even then the act of the accused would not come within the ambit of murder for the reason that there was provocation. This argument of the learned counsel is mentioned only to be rejected. Even if there was a demand made by the accused to which the deceased had mentioned that he has to go to a civil court and recover the amount, it is further to be pointed out that the circumstances at that juncture would clearly indicate that there was no provocation. The occurrence had taken at a place where the accused has gone along with an aruval and made the demand and when the money was not forthcoming, he cut the deceased indiscriminately. Even on the previous day he had made a demand and the accused had further stated that the amount should be paid within 10.00 a.m. the next morning otherwise he would finish the deceased off. The above conduct of the accused on the previous day and on the date of occurrence would clearly indicate that it was a pre-planned one. In such circumstances, the contention of the learned counsel for the respondent that the act of the accused would not fall within the ambit

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of murder has to be discountenanced.

20. On the above reasons, we are of the considered view that the judgment of the trial court has to be set aside and appeal preferred by the State has to be allowed. In the result, C.A. No.985/97 is allowed setting aside the judgment of acquittal and the accused/respondent is found guilty for the offence under Section 302 IPC for which he is sentenced to undergo life imprisonment. The learned Sessions Judge is directed to take steps to secure the accused/respondent in S.C. No.50 of 1995 and commit him to prison to undergo the remaining portion of the sentence imposed upon him. Sentence already undergone by him would be given set off. In view of the orders passed in C.A. No.985/97, no further orders are required in the criminal revision petition. Accordingly, Crl. R.C. No.860/97 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

GLN

To
1) The I Addl. Sessions Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri.(In duplicate for communication to the accused)

2) -Do- Thro' The Principal Sessions Judge, Dharmapuri.

3.The Pricipal Sessions Judge, Dharmapuri.

4.The Judicial Magistrate No.I, Dharmapuri.

5.-do- the Chief Judicial Magistrate, Dharmapuri.

6) The Director General of Police, Chennai.

7) The Public Prosecutor, High Court, Madras (3 Copies)

8) The Inspector of Police, Madhikonpalayam, Dharmapuri.

9.The District Collector,
Dharmapuri District, Dharmapuri.

+1cc to Mr.S.Doraisamy, Advocate Sr 28896

PV(CO)
km/20.7.

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